



February 28, 2014

**ENGROSSED
HOUSE BILL No. 1155**

DIGEST OF HB 1155 (Updated February 26, 2014 11:35 am - DI 106)

Citations Affected: IC 3-8; IC 35-31.5; IC 35-38; IC 35-47.

Synopsis: Expungement. Relocates and restates certain provisions dealing with the expungement of arrest records, and deletes inconsistent language. (Under current law, there are two inconsistent procedures for expunging arrest records.) Specifies where a petition for expungement must be filed, and removes the prohibition against a waiver or reduction of the filing fee for an indigent person. Grants a defense attorney and a probation department access to expunged records if authorized by court order. Allows a court to accept filing of
(Continued next page)

Effective: Upon passage.

**Turner, McMillin, Shackelford,
Porter**

(SENATE SPONSOR — STEELE)

January 13, 2014, read first time and referred to Committee on Courts and Criminal Code.
January 16, 2014, amended, reported — Do Pass.
January 21, 2014, read second time, ordered engrossed. Engrossed.
January 23, 2014, read third time, passed. Yeas 81, nays 15.

SENATE ACTION

February 4, 2014, read first time and referred to Committee on Judiciary.
February 27, 2014, amended, reported favorably — Do Pass.

EH 1155—LS 6274/DI 106



Digest Continued

a subsequent petition for expungement that includes convictions not named in the original petition under certain circumstances. Provides that a court must find by a preponderance of the evidence instead of by clear and convincing evidence that all the requirements of expungement have been met to order a person's conviction records marked as expunged. Prohibits a person from waiving the right to expungement as part of a plea agreement. Grants the state board of law examiners access to expunged records to determine a person's fitness for admission to the bar. Specifies the procedure to be used to regain the right to possess a firearm by a person convicted of a misdemeanor crime of domestic violence. (The introduced version of this bill was prepared by the criminal law and sentencing policy study committee.)

EH 1155—LS 6274/DI 106



February 28, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1155

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-8-1-5, AS AMENDED BY P.L.37-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 5. (a) This section does not apply to a
4 candidate for federal office.
5 (b) As used in this section, "felony" means a conviction in any
6 jurisdiction for which the convicted person might have been
7 imprisoned for more than one (1) year. However, the term does not
8 include a conviction:
9 (1) for which the person has been pardoned; or
10 (2) that has been:
11 (A) reversed;
12 (B) vacated;
13 (C) set aside; ~~or~~
14 (D) not entered because the trial court did not accept the
15 person's guilty plea; **or**
16 (E) expunged under IC 35-38-9.

EH 1155—LS 6274/DI 106



1 (c) A person is disqualified from assuming or being a candidate for
2 an elected office if:

3 (1) the person gave or offered a bribe, threat, or reward to procure
4 the person's election, as provided in Article 2, Section 6 of the
5 Constitution of the State of Indiana;

6 (2) the person does not comply with IC 5-8-3 because of a
7 conviction for a violation of the federal laws listed in that statute;

8 (3) in a:

9 (A) jury trial, a jury publicly announces a verdict against the
10 person for a felony;

11 (B) bench trial, the court publicly announces a verdict against
12 the person for a felony; or

13 (C) guilty plea hearing, the person pleads guilty or nolo
14 contendere to a felony;

15 (4) the person has been removed from the office the candidate
16 seeks under Article 7, Section 11 or Article 7, Section 13 of the
17 Constitution of the State of Indiana;

18 (5) the person is a member of the United States armed forces on
19 active duty and prohibited by the United States Department of
20 Defense from being a candidate; or

21 (6) the person is subject to:

22 (A) 5 U.S.C. 1502 (the Little Hatch Act); or

23 (B) 5 U.S.C. 7321-7326 (the Hatch Act);

24 and would violate either federal statute by becoming or remaining
25 the candidate of a political party for nomination or election to an
26 elected office or a political party office.

27 (d) The subsequent reduction of a felony to a Class A misdemeanor
28 under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

29 (1) jury has announced its verdict against the person for a felony;

30 (2) court has announced its verdict against the person for a felony;

31 or

32 (3) person has pleaded guilty or nolo contendere to a felony;

33 does not affect the operation of subsection (c).

34 SECTION 2. IC 35-31.5-2-78, AS ADDED BY P.L.114-2012,
35 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 UPON PASSAGE]: Sec. 78. "Crime of domestic violence", for
37 purposes of IC 5-2-6.1, **IC 35-38-9**, and IC 35-47-4-7, means an
38 offense or the attempt to commit an offense that:

39 (1) has as an element the:

40 (A) use of physical force; or

41 (B) threatened use of a deadly weapon; and

42 (2) is committed against a:



- 1 (A) current or former spouse, parent, or guardian of the
 2 defendant;
 3 (B) person with whom the defendant shared a child in
 4 common;
 5 (C) person who was cohabiting with or had cohabited with the
 6 defendant as a spouse, parent, or guardian; or
 7 (D) person who was or had been similarly situated to a spouse,
 8 parent, or guardian of the defendant.
- 9 SECTION 3. IC 35-38-5-1 IS REPEALED [EFFECTIVE UPON
 10 PASSAGE]. Sec. 1: (a) Whenever:
 11 (1) an individual is arrested but no criminal charges are filed
 12 against the individual; or
 13 (2) all criminal charges filed against an individual are dropped
 14 because:
 15 (A) of a mistaken identity;
 16 (B) no offense was in fact committed; or
 17 (C) there was an absence of probable cause;
 18 the individual may petition the court for expungement of the records
 19 related to the arrest.
 20 (b) A petition for expungement of records must be verified and filed
 21 in the court in which the charges were filed; or if no criminal charges
 22 were filed; in a court with criminal jurisdiction in the county where the
 23 arrest occurred. The petition must set forth:
 24 (1) the date of the arrest;
 25 (2) the charge;
 26 (3) the law enforcement agency employing the arresting officer;
 27 (4) any other known identifying information, such as the name of
 28 the arresting officer; case number; or court cause number;
 29 (5) the date of the petitioner's birth; and
 30 (6) the petitioner's Social Security number.
 31 (c) A copy of the petition shall be served on the law enforcement
 32 agency and the state central repository for records.
 33 (d) Upon receipt of a petition for expungement, the law enforcement
 34 agency shall notify the court of the name and address of each agency
 35 to which any records related to the arrest were forwarded. The clerk
 36 shall immediately send a copy of the petition to each of those agencies.
 37 Any agency desiring to oppose the expungement shall file a notice of
 38 opposition with the court setting forth reasons for resisting the
 39 expungement along with any sworn statements from individuals who
 40 represent the agency that explain the reasons for resisting the
 41 expungement within thirty (30) days after the petition is filed. A copy
 42 of the notice of opposition and copies of any sworn statements shall be



1 served on the petitioner in accordance with the Rules of Trial
2 Procedure. The court shall:

- 3 (1) summarily grant the petition;
4 (2) set the matter for hearing; or
5 (3) summarily deny the petition, if the court determines that:
6 (A) the petition is insufficient; or
7 (B) based on information contained in sworn statements
8 submitted by individuals who represent an agency, the
9 petitioner is not entitled to an expungement of records.

10 (e) If a notice of opposition is filed and the court does not
11 summarily grant or summarily deny the petition, the court shall set the
12 matter for a hearing.

13 (f) After a hearing is held under this section, the petition shall be
14 granted unless the court finds:

- 15 (1) the conditions in subsection (a) have not been met;
16 (2) the individual has a record of arrests other than minor traffic
17 offenses; or
18 (3) additional criminal charges are pending against the individual.

19 SECTION 4. IC 35-38-5-2 IS REPEALED [EFFECTIVE UPON
20 PASSAGE]. Sec. 2: If the petition for expungement is granted, the law
21 enforcement agency shall within thirty (30) days of receipt of the court
22 order, deliver to the individual or destroy all fingerprints, photographs,
23 or arrest records in their possession.

24 SECTION 5. IC 35-38-5-3 IS REPEALED [EFFECTIVE UPON
25 PASSAGE]. Sec. 3: Whenever the petition of an individual under
26 section 1 of this chapter is granted, no information concerning the
27 arrest may be placed or retained in any state central repository for
28 criminal history information or in any other alphabetically arranged
29 criminal history information system maintained by a local, regional, or
30 statewide law enforcement agency. However, this chapter does not
31 require any change or alteration in any record (such as a police blotter
32 entry) made at the time of the arrest or in the record of any court in
33 which the criminal charges were filed.

34 SECTION 6. IC 35-38-5-4 IS REPEALED [EFFECTIVE UPON
35 PASSAGE]. Sec. 4: If a person whose records are expunged brings an
36 action that might be defended with the contents of such records, the
37 defendant is presumed to have a complete defense to such an action. In
38 order for the plaintiff to recover, he must show that the contents of the
39 expunged records would not exonerate the defendant. The plaintiff may
40 be required to state under oath whether he had records in the criminal
41 justice system and whether those records were expunged. If the
42 plaintiff denies the existence of the records, the defendant may prove



1 their existence in any manner compatible with the law of evidence.

2 SECTION 7. IC 35-38-9-1, AS ADDED BY P.L.159-2013,
3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 1. (a) This section applies only to a person
5 who has been arrested if:

6 (1) the arrest did not result in a conviction or juvenile
7 adjudication; or

8 (2) the arrest resulted in a conviction or juvenile adjudication and
9 the conviction or adjudication was vacated on appeal.

10 (b) Not earlier than one (1) year after the date of arrest, if the person
11 was not convicted or adjudicated a delinquent child; or the date of the
12 opinion vacating the conviction or adjudication becomes final; the
13 person may petition the sentencing court (if the person was sentenced);
14 the court in which the person was charged (if the person was charged);
15 or any court exercising criminal jurisdiction in Indiana (if the person
16 was not charged or convicted) to seal records contained in:

17 (1) a court's files;

18 (2) the files of the department of correction;

19 (3) the files of the bureau of motor vehicles;

20 (4) the files of any other person who provided treatment or
21 services to the petitioning person under a court order; and

22 (5) the central repository for criminal history information
23 maintained by the state police department;

24 that relate to the person's arrest.

25 (c) A person who files a petition to seal arrest records is not required
26 to pay a filing fee.

27 (d) If the court finds by clear and convincing evidence that:

28 (1) the person's arrest:

29 (A) did not result in a conviction or juvenile adjudication; or

30 (B) resulted in a conviction or juvenile adjudication and the
31 conviction or adjudication was vacated on appeal; and

32 (2) no charges are pending against the person;

33 the court shall order the arrest records described in subsection (b)
34 sealed so that only a criminal justice agency may access the records
35 without the order of a court.

36 (a) This section applies only to a person who has been arrested
37 if:

38 (1) the arrest:

39 (A) did not result in a conviction or juvenile adjudication;
40 or

41 (B) resulted in a conviction or juvenile adjudication and
42 the conviction or adjudication was vacated on appeal; and



- 1 (2) the person is not currently participating in a pretrial
2 diversion program.
- 3 (b) Not earlier than one (1) year after the date of arrest, if the
4 person was not convicted or adjudicated a delinquent child, or the
5 date of the opinion vacating the conviction or adjudication becomes
6 final (unless the prosecuting attorney agrees in writing to an
7 earlier time), the person may petition the court for expungement
8 of the records related to the arrest.
- 9 (c) A petition for expungement of records must be verified and
10 filed in the court in which the charges were filed, or if no criminal
11 charges were filed, in a court with criminal jurisdiction in the
12 county where the arrest occurred. The petition must set forth:
- 13 (1) the date of the arrest;
- 14 (2) the county in which the arrest occurred;
- 15 (3) the law enforcement agency employing the arresting
16 officer, if known;
- 17 (4) any other known identifying information, such as the name
18 of the arresting officer, case number, or court cause number;
- 19 (5) the date of the petitioner's birth; and
- 20 (6) the petitioner's Social Security number.
- 21 (d) The court shall serve a copy of the petition on the
22 prosecuting attorney.
- 23 (e) Upon receipt of a petition for expungement, the court:
- 24 (1) may summarily deny the petition if the petition does not
25 meet the requirements of this section, or if the statements
26 contained in the petition indicate that the petitioner is not
27 entitled to relief; and
- 28 (2) shall grant the petition unless:
- 29 (A) the conditions described in subsection (a) have not been
30 met; or
- 31 (B) criminal charges are pending against the person.
- 32 (f) Whenever the petition of a person under this section is
33 granted, no information concerning the arrest may be placed or
34 retained in any state central repository for criminal history
35 information or in any other alphabetically arranged criminal
36 history information system maintained by a local, regional, or
37 statewide law enforcement agency. However, this chapter does not
38 require any change or alteration in:
- 39 (1) any internal record made by a law enforcement agency at
40 the time of the arrest and not intended for release to the
41 public;
- 42 (2) the record of any court in which the criminal charges were



1 **filed; or**

2 **(3) records that relate to a diversion or deferral program.**

3 **(g) If a person whose records are expunged brings an action that**
 4 **might be defended with the contents of the expunged records, the**
 5 **defendant is presumed to have a complete defense to the action. In**
 6 **order for the plaintiff to recover, the plaintiff must show that the**
 7 **contents of the expunged records would not exonerate the**
 8 **defendant. The plaintiff may be required to state under oath**
 9 **whether the plaintiff had records in the criminal justice system and**
 10 **whether those records were expunged. If the plaintiff denies the**
 11 **existence of the records, the defendant may prove their existence**
 12 **in any manner compatible with the law of evidence.**

13 SECTION 8. IC 35-38-9-2, AS ADDED BY P.L.159-2013,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 2. (a) This section applies only to a person
 16 convicted of a misdemeanor, including a Class D felony **(for a crime**
 17 **committed before July 1, 2014) or a Level 6 felony (for a crime**
 18 **committed after June 30, 2014) reduced to a misdemeanor.**

19 (b) Not earlier than five (5) years after the date of conviction (unless
 20 the prosecuting attorney consents in writing to an earlier period), the
 21 person convicted of the misdemeanor may petition ~~the sentencing a~~
 22 court to expunge **all** conviction records, **including records** contained
 23 in:

24 (1) a court's files;

25 (2) the files of the department of correction;

26 (3) the files of the bureau of motor vehicles; and

27 (4) the files of any other person who provided treatment or
 28 services to the petitioning person under a court order;

29 that relate to the person's misdemeanor conviction.

30 (c) A person who files a petition to expunge conviction records shall
 31 ~~pay the filing fees required for filing a civil action, and the clerk shall~~
 32 ~~distribute the fees as in the case of a civil action. A person who files a~~
 33 ~~petition to expunge conviction records may not receive a waiver or~~
 34 ~~reduction of fees upon a showing of indigency. file the petition in a~~
 35 **circuit or superior court in the county of conviction.**

36 (d) If the court finds by ~~clear and convincing a preponderance of~~
 37 **the evidence that:**

38 (1) the period required by this section has elapsed;

39 (2) no charges are pending against the person;

40 ~~(3) the person does not have an existing or pending driver's~~
 41 ~~license suspension;~~

42 ~~(4) (3) the person has successfully completed the person's~~



1 sentence, including any term of supervised release, paid all fines,
 2 fees, and court costs, and satisfied all other obligations any
 3 restitution obligation placed on the person as part of the
 4 sentence; and

5 ~~(5)~~ (4) the person has not been convicted of a crime within the
 6 previous five (5) years **(or within a shorter period agreed to by**
 7 **the prosecuting attorney if the prosecuting attorney has**
 8 **consented to a shorter period under subsection (b));**

9 the court shall order the conviction records described in subsection (b)
 10 expunged in accordance with section 6 of this chapter.

11 SECTION 9. IC 35-38-9-3, AS ADDED BY P.L.159-2013,
 12 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (b),
 14 this section applies only to a person convicted of a Class D felony **(for**
 15 **a crime committed before July 1, 2014) or a Level 6 felony (for a**
 16 **crime committed after June 30, 2014).** This section does not apply to
 17 a person if the person's Class D felony **or Level 6 felony** was reduced
 18 to a Class A misdemeanor.

19 (b) This section does not apply to the following:

- 20 (1) An elected official convicted of an offense while serving the
 21 official's term or as a candidate for public office.
 22 (2) A sex or violent offender (as defined in IC 11-8-8-5).
 23 (3) A person convicted of a felony that resulted in bodily injury to
 24 another person.
 25 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
 26 misconduct (IC 35-44.1-1-1).
 27 (5) A person convicted of an offense described in:
 28 (A) IC 35-42-1;
 29 (B) IC 35-42-3.5; or
 30 (C) IC 35-42-4.

31 (c) Not earlier than eight (8) years after the date of conviction
 32 (unless the prosecuting attorney consents in writing to an earlier
 33 period), the person convicted of the Class D felony **or Level 6 felony**
 34 may petition ~~the sentencing a court~~ to expunge **all** conviction records,
 35 **including records** contained in:

- 36 (1) a court's files;
 37 (2) the files of the department of correction;
 38 (3) the files of the bureau of motor vehicles; and
 39 (4) the files of any other person who provided treatment or
 40 services to the petitioning person under a court order;
 41 that relate to the person's Class D **or Level 6** felony conviction.

42 (d) A person who files a petition to expunge conviction records shall



1 pay the filing fees required for filing a civil action, and the clerk shall
 2 distribute the fees as in the case of a civil action. A person who files a
 3 petition to expunge conviction records may not receive a waiver or
 4 reduction of fees upon a showing of indigency. **file the petition in a**
 5 **circuit or superior court in the county of conviction.**

6 (e) If the court finds by ~~clear and convincing a preponderance of~~
 7 **the** evidence that:

8 (1) the period required by this section has elapsed;

9 (2) no charges are pending against the person;

10 (3) ~~the person does not have an existing or pending driver's~~
 11 ~~license suspension;~~

12 ~~(4) (3) the person has successfully completed the person's~~
 13 ~~sentence, including any term of supervised release, paid all fines,~~
 14 ~~fees, and court costs, and satisfied all other obligations any~~
 15 ~~restitution obligation placed on the person as part of the~~
 16 ~~sentence; and~~

17 ~~(5) (4) the person has not been convicted of a crime within the~~
 18 ~~previous eight (8) years (or within a shorter period agreed to~~
 19 ~~by the prosecuting attorney if the prosecuting attorney has~~
 20 ~~consented to a shorter period under subsection (c));~~

21 the court shall order the conviction records described in subsection (c)
 22 expunged in accordance with section 6 of this chapter.

23 SECTION 10. IC 35-38-9-4, AS ADDED BY P.L.159-2013,
 24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b),
 26 this section applies only to a person convicted of a felony **who may not**
 27 **seek expungement of that felony under section 3 of this chapter.**

28 (b) This section does not apply to the following:

29 (1) An elected official convicted of an offense while serving the
 30 official's term or as a candidate for public office.

31 (2) A sex or violent offender (as defined in IC 11-8-8-5).

32 (3) A person convicted of a felony that resulted in serious bodily
 33 injury to another person.

34 (4) A person convicted of official misconduct (IC 35-44.1-1-1).

35 (5) A person convicted of an offense described in:

36 (A) IC 35-42-1;

37 (B) IC 35-42-3.5; or

38 (C) IC 35-42-4.

39 (c) Not earlier than **the later of** eight (8) years **after from the date**
 40 **of conviction, or three (3) years from** the completion of the person's
 41 sentence, ~~(including the completion of any term of supervised release~~
 42 ~~and the satisfaction of all other obligations placed on the person as part~~



1 of the sentence; unless the prosecuting attorney consents in writing to
 2 an earlier period, the person convicted of the felony may petition ~~the~~
 3 ~~sentencing a~~ court to expunge **all** conviction records, **including**
 4 **records** contained in:

- 5 (1) a court's files;
- 6 (2) the files of the department of correction;
- 7 (3) the files of the bureau of motor vehicles; and
- 8 (4) the files of any other person who provided treatment or
 9 services to the petitioning person under a court order;

10 that relate to the person's felony conviction.

11 (d) A person who files a petition to expunge conviction records shall
 12 ~~pay the filing fees required for filing a civil action; and the clerk shall~~
 13 ~~distribute the fees as in the case of a civil action. A person who files a~~
 14 ~~petition to expunge conviction records may not receive a waiver or~~
 15 ~~reduction of fees upon a showing of indigency. file the petition in a~~
 16 **circuit or superior court in the county of conviction.**

17 (e) If the court finds by ~~clear and convincing~~ a **preponderance of**
 18 **the** evidence that:

- 19 (1) the period required by this section has elapsed;
- 20 (2) no charges are pending against the person;
- 21 ~~(3) the person does not have an existing or pending driver's~~
 22 ~~license suspension;~~
- 23 ~~(4) (3) the person has successfully completed the person's~~
 24 ~~sentence; including any term of supervised release; paid all fines,~~
 25 **fees, and court costs,** and satisfied ~~all other obligations any~~
 26 **restitution obligation** placed on the person as part of the
 27 sentence; and
- 28 ~~(5) (4) the person has not been convicted of a crime within the~~
 29 ~~previous eight (8) years (or within a shorter period agreed to~~
 30 **by the prosecuting attorney if the prosecuting attorney has**
 31 **consented to a shorter period under subsection (c));**

32 the court may order the conviction records described in subsection (c)
 33 marked as expunged in accordance with section 7 of this chapter. A
 34 person whose records have been ordered marked as expunged under
 35 this section is considered to have had the person's records expunged for
 36 all purposes other than the disposition of the records.

37 SECTION 11. IC 35-38-9-5, AS ADDED BY P.L.159-2013,
 38 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b),
 40 this section applies to a person convicted of a felony, including:

- 41 (1) an elected official convicted of an offense while serving the
 42 official's term or as a candidate for public office; and



- 1 (2) a person convicted of a felony that resulted in serious bodily
 2 injury to another person.
- 3 (b) This section does not apply to the following:
- 4 (1) A sex or violent offender (as defined in IC 11-8-8-5).
 5 (2) A person convicted of official misconduct (IC 35-44.1-1-1).
 6 (3) A person convicted of an offense described in:
 7 (A) IC 35-42-1;
 8 (B) IC 35-42-3.5; or
 9 (C) IC 35-42-4.
- 10 (c) Not earlier than **the later of ten (10) years after from the date**
 11 **of conviction, or five (5) years from** the completion of the person's
 12 sentence, ~~(including the completion of any term of supervised release~~
 13 ~~and the satisfaction of all other obligations placed on the person as part~~
 14 ~~of the sentence;~~ unless the prosecuting attorney consents in writing to
 15 an earlier period, the person convicted of the felony may petition ~~the~~
 16 ~~sentencing a~~ court to expunge **all** conviction records, **including**
 17 **records** contained in:
 18 (1) a court's files;
 19 (2) the files of the department of correction;
 20 (3) the files of the bureau of motor vehicles; and
 21 (4) the files of any other person who provided treatment or
 22 services to the petitioning person under a court order;
 23 that relate to the person's felony conviction.
- 24 (d) A person who files a petition to expunge conviction records shall
 25 ~~pay the filing fees required for filing a civil action, and the clerk shall~~
 26 ~~distribute the fees as in the case of a civil action. A person who files a~~
 27 ~~petition to expunge conviction records may not receive a waiver or~~
 28 ~~reduction of fees upon a showing of indigency. file the petition in a~~
 29 **circuit or superior court in the county of conviction.**
- 30 (e) If the court finds by ~~clear and convincing a~~ **preponderance of**
 31 **the** evidence that:
 32 (1) the period required by this section has elapsed;
 33 (2) no charges are pending against the person;
 34 ~~(3) the person does not have an existing or pending driver's~~
 35 ~~license suspension;~~
 36 ~~(4) (3) the person has successfully completed the person's~~
 37 ~~sentence, including any term of supervised release, paid all fines,~~
 38 **fees, and court costs,** and satisfied ~~all other obligations any~~
 39 **restitution obligation** placed on the person as part of the
 40 sentence;
 41 ~~(5) (4) the person has not been convicted of a crime within the~~
 42 previous ten (10) years **(or within a shorter period agreed to by**



1 **the prosecuting attorney if the prosecuting attorney has**
 2 **consented to a shorter period under subsection (c)); and**

3 ~~(6)~~ **(5)** the prosecuting attorney has consented in writing to the
 4 expungement of the person's criminal records;

5 the court may order the conviction records described in subsection (c)
 6 marked as expunged in accordance with section 7 of this chapter. A
 7 person whose records have been ordered marked as expunged under
 8 this section is considered to have had the person's records expunged for
 9 all purposes other than the disposition of the records.

10 SECTION 12. IC 35-38-9-6, AS ADDED BY P.L.159-2013,
 11 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 UPON PASSAGE]: Sec. 6. (a) If the court orders conviction records
 13 expunged under sections 2 through 3 of this chapter, the court shall do
 14 the following with respect to the specific records expunged by the
 15 court:

16 (1) Order:

17 (A) the department of correction;

18 (B) the bureau of motor vehicles; and

19 (C) each:

20 (i) law enforcement agency; and

21 (ii) other person;

22 who incarcerated, provided treatment for, or provided other
 23 services for the person under an order of the court;

24 to prohibit the release of the person's records or information in the
 25 person's records to anyone without a court order, other than a law
 26 enforcement officer acting in the course of the officer's official
 27 duty.

28 (2) Order the central repository for criminal history information
 29 maintained by the state police department to seal the person's
 30 expunged conviction records. Records sealed under this
 31 subdivision may be disclosed only to:

32 (A) a prosecuting attorney, if:

33 (i) authorized by a court order; and

34 (ii) needed to carry out the official duties of the prosecuting
 35 attorney;

36 **(B) a defense attorney, if:**

37 **(i) authorized by a court order; and**

38 **(ii) needed to carry out the professional duties of the**
 39 **defense attorney;**

40 **(C) a probation department, if:**

41 **(i) authorized by a court order; and**

42 **(ii) necessary to prepare a presentence report; and**



1 ~~(B)~~ **(D)** the Federal Bureau of Investigation and the
 2 Department of Homeland Security, if disclosure is required to
 3 comply with an agreement relating to the sharing of criminal
 4 history information; **and**

5 **(E) the:**

6 **(i) members of the state board of law examiners;**

7 **(ii) executive director of the state board of law**
 8 **examiners; and**

9 **(iii) employees of the state board of law examiners, in**
 10 **accordance with rules adopted by the state board of law**
 11 **examiners;**

12 **for the purpose of determining whether an applicant**
 13 **possesses the necessary good moral character for**
 14 **admission to the bar.**

15 (3) Notify the clerk of the supreme court to seal any records in the
 16 clerk's possession that relate to the conviction.

17 **A probation department may provide an unredacted version of a**
 18 **presentence report disclosed under subdivision (2)(C) to any**
 19 **person authorized by law to receive a presentence report.**

20 (b) Except as provided in subsection (c), if a petition to expunge
 21 conviction records is granted under sections 2 through 3 of this chapter,
 22 the records of:

23 (1) the sentencing court;

24 (2) a juvenile court;

25 (3) a court of appeals; and

26 (4) the supreme court;

27 concerning the person shall be permanently sealed. **However, a**
 28 **petition for expungement granted under sections 2 through 3 of**
 29 **this chapter does not affect an existing or pending driver's license**
 30 **suspension.**

31 (c) If a petition to expunge conviction records is granted under
 32 sections 2 through 3 of this chapter with respect to the records of a
 33 person who is named **as an appellant or an appellee** in an opinion or
 34 memorandum decision by the supreme court or the court of appeals, the
 35 court shall:

36 (1) redact the opinion or memorandum decision as it appears on
 37 the computer gateway administered by the office of technology so
 38 that it does not include the petitioner's name (in the same manner
 39 that opinions involving juveniles are redacted); and

40 (2) provide a redacted copy of the opinion to any publisher or
 41 organization to whom the opinion or memorandum decision is
 42 provided after the date of the order of expungement.



1 The supreme court and court of appeals are not required to destroy or
 2 otherwise dispose of any existing copy of an opinion or memorandum
 3 decision that includes the petitioner's name.

4 (d) Notwithstanding subsection (b), a prosecuting attorney may
 5 submit a written application to a court that granted an expungement
 6 petition under this chapter to gain access to any records that were
 7 permanently sealed under subsection (b), if the records are relevant in
 8 a new prosecution of the person. If a prosecuting attorney who submits
 9 a written application under this subsection shows that the records are
 10 relevant for a new prosecution of the person, the court that granted the
 11 expungement petition shall:

12 (1) order the records to be unsealed; and

13 (2) allow the prosecuting attorney who submitted the written
 14 application to have access to the records.

15 If a court orders records to be unsealed under this subsection, the court
 16 shall order the records to be permanently resealed at the earliest
 17 possible time after the reasons for unsealing the records cease to exist.
 18 However, if the records are admitted as evidence against the person in
 19 a new prosecution that results in the person's conviction, or are used to
 20 enhance a sentence imposed on the person in a new prosecution, the
 21 court is not required to reseat the records.

22 (e) If a person whose conviction records are expunged under
 23 **sections 5 2 through 5** of this chapter is required to register as a sex
 24 offender based on the commission of a felony which has been
 25 expunged:

26 (1) the expungement does not affect the operation of the sex
 27 offender registry web site, any person's ability to access the
 28 person's records, records required to be maintained concerning
 29 sex or violent offenders, or any registration requirement imposed
 30 on the person; and

31 (2) the expunged conviction must be clearly marked as expunged
 32 on the sex offender registry web site.

33 **(f) Expungement of a crime of domestic violence under section**
 34 **2 of this chapter does not restore a person's right to possess a**
 35 **firearm. The right of a person convicted of a crime of domestic**
 36 **violence to possess a firearm may be restored only in accordance**
 37 **with IC 35-47-4-7.**

38 SECTION 13. IC 35-38-9-7, AS ADDED BY P.L.159-2013,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 UPON PASSAGE]: Sec. 7. (a) This section applies only to a person
 41 who has filed a petition for expungement under section 4 or 5 of this
 42 chapter and whose records have been ordered marked as expunged.



1 (b) The court records and other public records relating to the arrest,
 2 conviction, or sentence of a person whose conviction records have been
 3 marked as expunged remain public records. However, the court shall
 4 order that the records be clearly and visibly marked or identified as
 5 being expunged. **A petition for expungement granted under sections**
 6 **4 through 5 of this chapter does not affect an existing or pending**
 7 **driver's license suspension.**

8 (c) The state police department, the bureau of motor vehicles, and
 9 any other law enforcement agency in possession of records that relate
 10 to the conviction ordered to be marked as expunged shall add an entry
 11 to the person's record of arrest, conviction, or sentence in the criminal
 12 history data base stating that the record is marked as expunged.

13 SECTION 14. IC 35-38-9-8, AS ADDED BY P.L.159-2013,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 8. (a) This section applies only to a petition
 16 to expunge conviction records under sections 2 through 5 of this
 17 chapter. This section does not apply to a petition to ~~seal~~ **expunge** arrest
 18 records under section 1 of this chapter.

19 (b) Any person may seek an expungement under sections 2 through
 20 5 of this chapter by filing a verified petition for expungement. The
 21 petition must include the following:

22 (1) The petitioner's full name and all other legal names or aliases
 23 by which the petitioner is or has been known.

24 (2) The petitioner's date of birth.

25 (3) The petitioner's addresses from the date of the offense to the
 26 date of the petition.

27 (4) **A certified copy of petitioner's records from the bureau of**
 28 **motor vehicles.**

29 (5) The petitioner shall affirm that no criminal investigation or
 30 charges are pending against the petitioner.

31 ~~(5)~~ (6) The petitioner shall affirm that the petitioner has not
 32 committed another crime within the period required for
 33 expungement.

34 ~~(6)~~ (7) The petitioner shall list all convictions and the date of the
 35 conviction, **and any appeals from the conviction and the date**
 36 **any appellate opinion was handed down, if applicable.**

37 ~~(7)~~ (8) The petitioner shall affirm that the required period has
 38 elapsed or attach a copy of the prosecuting attorney's written
 39 consent to a shorter period.

40 ~~(8)~~ (9) The petitioner shall describe any other petitions that the
 41 petitioner has filed under this chapter.

42 ~~(9)~~ (10) For a petition filed under section 5 of this chapter, the



1 petitioner shall attach a copy of the prosecuting attorney's written
2 consent.

3 ~~(10)~~ **(11)** The petitioner shall provide evidence that the petitioner
4 has ~~successfully completed all terms of the sentence previously~~
5 **paid all fines, fees, and court costs, and satisfied any**
6 **restitution obligation imposed on the person as part of the**
7 **sentence. imposed, including:**

8 (A) ~~payment of restitution, fines, and court costs; and~~

9 ~~(B) completion of any terms of probation, parole, or~~
10 ~~community corrections.~~

11 (c) The petitioner may include any other information that the
12 petitioner believes may assist the court.

13 (d) The petitioner shall serve a copy of the petition upon the
14 prosecuting attorney in accordance with the Indiana Rules of Trial
15 Procedure.

16 (e) The prosecuting attorney shall ~~promptly forward a copy of the~~
17 ~~petition to the last known address of the victim, and inform the victim~~
18 ~~of the victim's right to be present and address the court. inform the~~
19 **victim of the victim's rights under IC 35-40-6 by contacting the**
20 **victim at the victim's last known address.**

21 (f) The prosecuting attorney shall reply to the petition not later than
22 thirty (30) days after receipt.

23 SECTION 15. IC 35-38-9-9, AS ADDED BY P.L.159-2013,
24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 9. (a) If the prosecuting attorney does not
26 object, the court may grant the petition for expungement without a
27 hearing.

28 (b) The court may summarily deny a petition, if the petition does not
29 meet the requirements of section 8 of this chapter, or if the statements
30 contained in the petition demonstrate that the petitioner is not entitled
31 to relief.

32 (c) If the prosecuting attorney objects to the petition, the court shall
33 set the matter for hearing not sooner than sixty (60) days after service
34 of the petition on the prosecuting attorney.

35 (d) A victim of the offense for which expungement is sought may
36 submit an oral or written statement in support of or in opposition to the
37 petition at the time of the hearing. ~~The court shall consider the victim's~~
38 ~~statement before making its determination.~~

39 ~~(e)~~ The petitioner must prove by ~~clear and convincing a~~
40 **preponderance of the** evidence that the facts alleged in the verified
41 petition are true.

42 ~~(f)~~ **(e)** The **grant or** denial of a petition is an appealable final order.



1 ~~(g)~~ **(f)** If the court grants the petition for expungement, the court
 2 shall issue an order of expungement as described in ~~section~~ **sections 6**
 3 **and 7** of this chapter.

4 ~~(h)~~ **(g)** This subsection applies only to a petition to expunge
 5 conviction records filed under sections 2 through 5 of this chapter. This
 6 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
 7 under section 1 of this chapter. A petitioner may seek to expunge more
 8 than one (1) conviction at the same time. The petitioner shall
 9 consolidate all convictions that the petitioner wishes to expunge from
 10 the same county in one (1) petition. A petitioner who wishes to
 11 expunge convictions from separate counties must file a petition in each
 12 county in which a conviction was entered.

13 ~~(i)~~ **(h)** This subsection applies only to a petition to expunge
 14 conviction records filed under sections 2 through 5 of this chapter. This
 15 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
 16 under section 1 of this chapter. Except as provided in ~~subsection (j)~~
 17 **subsections (i) and (j)**, a petitioner may file ~~only one (1)~~ **a** petition for
 18 expungement **only one (1) time** during the petitioner's lifetime. For
 19 purposes of this subsection, all petitions for expungement filed in
 20 separate counties for offenses committed in those counties count as one
 21 (1) petition if they are filed in one (1) three hundred sixty-five (365)
 22 day period.

23 ~~(j)~~ **(i)** A petitioner whose petition for expungement has been denied,
 24 ~~on the merits~~; in whole or in part, may file a subsequent petition for
 25 expungement with respect to one (1) or more convictions included in
 26 the initial expungement petition that were not expunged. **However, if**
 27 **the petition was denied due to the court's exercise of its discretion**
 28 **under section 4 or 5 of this chapter**, a subsequent petition for
 29 expungement may be filed ~~not earlier than~~ **only after the elapse of**
 30 **three (3) years following from the date on which the denial of a**
 31 **previous expungement petition was denied. Except as provided in**
 32 **subsection (j)**, a subsequent petition for expungement may not include
 33 any conviction that was not included in the initial expungement
 34 petition.

35 **(j)** A court may permit a petitioner to file a subsequent petition
 36 for expungement with respect to one (1) or more convictions that
 37 were not included in the initial expungement petition only if the
 38 court finds that:

- 39 **(1) the petitioner intended in good faith to comply with**
 40 **subsections (g) and (h);**
 41 **(2) the petitioner's failure to comply with subsections (g) and**
 42 **(h) was due to:**



- 1 **(A) excusable neglect; or**
 2 **(B) circumstances beyond the petitioner's control; and**
 3 **(3) permitting the petitioner to file a subsequent petition for**
 4 **expungement is in the best interests of justice.**

5 SECTION 16. IC 35-38-9-10, AS ADDED BY P.L.159-2013,
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: Sec. 10. (a) It is unlawful discrimination for any
 8 person to:

- 9 (1) suspend;
 10 (2) expel;
 11 (3) refuse to employ;
 12 (4) refuse to admit;
 13 (5) refuse to grant or renew a license, permit, or certificate
 14 necessary to engage in any activity, occupation, or profession; or
 15 (6) otherwise discriminate against;

16 any person because of a conviction or arrest record expunged or sealed
 17 under this chapter.

18 (b) The civil rights of a person whose conviction has been expunged
 19 shall be restored, including the right to vote, to hold public office, **and**
 20 to serve as a juror. ~~and; to the extent not prohibited by federal law, to~~
 21 ~~own or possess a firearm.~~

22 (c) In any application for employment, a license, or other right or
 23 privilege, a person may be questioned about a previous criminal record
 24 only in terms that exclude expunged convictions or arrests, such as:
 25 "Have you ever been arrested for or convicted of a crime that has not
 26 been expunged by a court?"

27 (d) A person whose record is expunged shall be treated as if the
 28 person had never been convicted of the offense. However, upon a
 29 subsequent arrest or conviction for an unrelated offense, the prior
 30 expunged conviction:

- 31 (1) may be considered by the court in determining the sentence
 32 imposed for the new offense;
 33 (2) is a prior unrelated conviction for purposes of:
 34 (A) a habitual offender enhancement; and
 35 (B) enhancing the new offense based on a prior conviction;
 36 and
 37 (3) may be admitted as evidence in the proceeding for a new
 38 offense as if the conviction had not been expunged.

39 (e) Any person that discriminates against a person as described in
 40 subsection (a) commits a Class C infraction and may be held in
 41 contempt by the court issuing the order of expungement or by any other
 42 court of general jurisdiction. Any person may file a written motion of



1 contempt to bring an alleged violation of this section to the attention of
2 a court. In addition, the person is entitled to injunctive relief.

3 (f) In any judicial or administrative proceeding alleging negligence
4 or other fault, an order of expungement may be introduced as evidence
5 of the person's exercise of due care in hiring, retaining, licensing,
6 certifying, admitting to a school or program, or otherwise transacting
7 business or engaging in activity with the person to whom the order of
8 expungement was issued.

9 (g) A conviction that has been expunged under this chapter is not
10 admissible as evidence in an action for negligent hiring, admission, or
11 licensure against a person or entity who relied on the order.

12 **(h) A petition for expungement and an order for expungement**
13 **are confidential.**

14 SECTION 17. IC 35-38-9-11 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) A person may not**
17 **waive the right to expungement under this chapter as part of a plea**
18 **agreement. Any purported waiver of the right to expungement in**
19 **a plea agreement is invalid and unenforceable as against public**
20 **policy.**

21 **(b) This section does not prohibit the finding of a waiver of the**
22 **right to expungement based on a failure to comply with the**
23 **provisions of this chapter.**

24 SECTION 18. IC 35-47-4-7, AS ADDED BY P.L.118-2007,
25 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 7. (a) Notwithstanding IC 35-47-2,
27 IC 35-47-2.5, the restoration of the right to serve on a jury under
28 IC 33-28-5-18, ~~or~~ the restoration of the right to vote under IC 3-7-13-5,
29 **or the expungement of a crime of domestic violence under**
30 **IC 35-38-9**, and except as provided in subsections (b), (c), and (f), a
31 person who has been convicted of a crime of domestic violence may
32 not possess a firearm. ~~after the person's release from imprisonment or~~
33 ~~lawful detention:~~

34 (b) Not earlier than five (5) years after the date of conviction, a
35 person who has been convicted of a crime of domestic violence may
36 petition the court for restoration of the person's right to possess a
37 firearm. In determining whether to restore the person's right to possess
38 a firearm, the court shall consider the following factors:

39 (1) Whether the person has been subject to:

40 (A) a protective order;

41 (B) a no contact order;

42 (C) a workplace violence restraining order; or



- 1 (D) any other court order that prohibits the person from
 2 possessing a firearm.
- 3 (2) Whether the person has successfully completed a substance
 4 abuse program, if applicable.
- 5 (3) Whether the person has successfully completed a parenting
 6 class, if applicable.
- 7 (4) Whether the person still presents a threat to the victim of the
 8 crime.
- 9 (5) Whether there is any other reason why the person should not
 10 possess a firearm, including whether the person failed to satisfy
 11 a specified condition under subsection (c) or whether the person
 12 has committed a subsequent offense.
- 13 (c) The court may condition the restoration of a person's right to
 14 possess a firearm upon the person's satisfaction of specified conditions.
- 15 (d) If the court denies a petition for restoration of the right to
 16 possess a firearm, the person may not file a second or subsequent
 17 petition until one (1) year has elapsed after the filing of the most recent
 18 petition.
- 19 (e) A person has not been convicted of a crime of domestic violence
 20 for purposes of subsection (a) ~~if the conviction has been expunged or~~
 21 ~~if the person has been pardoned.~~
- 22 (f) The right to possess a firearm shall be restored to a person whose
 23 conviction is reversed on appeal or on postconviction review at the
 24 earlier of the following:
- 25 (1) At the time the prosecuting attorney states on the record that
 26 the charges that gave rise to the conviction will not be refiled.
- 27 (2) Ninety (90) days after the final disposition of the appeal or the
 28 postconviction proceeding.
- 29 **SECTION 19. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1155, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 21, after "arrest" insert ":

(A)".

Page 5, line 23, delete "(2) the arrest", begin a new line double block indented and insert:

"(B)".

Page 5, line 24, delete "." and insert "; and

(2) the person is not currently participating in a pretrial diversion program."

Page 5, line 36, delete "the charge;" and insert **"the county in which the arrest occurred;"**.

Page 5, line 38, after "officer" insert ", if known".

Page 6, line 1, delete "A" and insert **"The court shall serve a"**.

Page 6, line 1, delete "shall be served".

Page 6, line 2, delete ", the law enforcement agency that arrested the person, and" and insert ".".

Page 6, delete line 3.

Page 6, line 4, delete "law".

Page 6, delete lines 5 through 15.

Page 6, line 16, after "court" insert ":

(1) may summarily deny the petition if the petition does not meet the requirements of this section, or if the statements contained in the petition indicate that the petitioner is not entitled to relief; and

(2) shall grant the petition unless:

(A) the conditions described in subsection (a) have not been met; or

(B) criminal charges are pending against the person."

Page 6, line 16, delete "shall:".

Page 6, delete lines 17 through 35.

Page 6, line 36, delete "(i)" and insert **"(f)"**.

Page 7, line 7, delete "(j)" and insert **"(g)"**.

Page 7, line 40, strike "clear and convincing" and insert **"a preponderance of the"**.

Page 8, strike lines 1 through 2.

Page 8, line 3, strike "(4)" and insert **"(3)"**.

Page 8, line 3, strike "successfully completed the person's



sentence,".

Page 8, line 4, strike "including any term of supervised release,".

Page 8, line 7, strike "(5)" and insert "(4)".

Page 9, line 8, strike "clear and convincing" and insert "a **preponderance of the**".

Page 9, strike lines 11 through 12.

Page 9, line 13, strike "(4)" and insert "(3)".

Page 9, line 13, strike "successfully completed the person's sentence,".

Page 9, line 14, strike "including any term of supervised release,".

Page 9, line 17, strike "(5)" and insert "(4)".

Page 9, line 17, reset in roman "crime".

Page 9, line 17, delete "felony".

Page 9, line 39, after "than" insert "**the later of**".

Page 9, line 39, strike "after" and insert "**from the date of conviction, or three (3) years from**".

Page 9, line 40, strike "(including the completion of any term of supervised" and insert ",".

Page 9, strike line 41.

Page 9, line 42, strike "as part of the sentence,".

Page 10, line 1, delete ")".

Page 10, line 16, strike "clear and convincing" and insert "a **preponderance of the**".

Page 10, strike lines 19 through 20.

Page 10, line 21, strike "(4)" and insert "(3)".

Page 10, line 21, strike "successfully completed the person's sentence,".

Page 10, line 22, strike "including any term of supervised release,".

Page 10, line 25, strike "(5)" and insert "(4)".

Page 10, line 25, reset in roman "crime".

Page 10, line 25, delete "felony".

Page 10, line 30, reset in roman "marked as".

Page 10, line 30, reset in roman "section 7".

Page 10, line 30, delete "section 6".

Page 10, line 31, reset in roman "A person whose records have been ordered marked as".

Page 10, reset in roman lines 32 through 34.

Page 11, line 8, after "than" insert "**the later of**".

Page 11, line 8, strike "after" and insert "**from the date of conviction, or five (5) years from**".

Page 11, line 9, strike "(including the completion of any term of supervised" and insert ",".



Page 11, strike line 10.

Page 11, line 11, strike "as part of the sentence,".

Page 11, line 12, delete ")".

Page 11, line 27, strike "clear and convincing" and insert "**a preponderance of the**".

Page 11, strike lines 30 through 31.

Page 11, line 32, strike "(4)" and insert "**(3)**".

Page 11, line 32, strike "successfully completed the person's sentence,".

Page 11, line 33, strike "including any term of supervised release,".

Page 11, line 36, strike "(5)" and insert "**(4)**".

Page 11, line 36, reset in roman "crime".

Page 11, line 36, delete "felony".

Page 11, line 40, strike "(6)" and insert "**(5)**".

Page 12, line 8, reset in roman "3".

Page 12, line 8, delete "4".

Page 13, line 6, reset in roman "3".

Page 13, line 6, delete "4".

Page 13, line 12, after "sealed." insert "**However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.**".

Page 13, line 14, reset in roman "3".

Page 13, line 15, delete "4".

Page 14, line 4, strike "section" and insert "**sections**".

Page 14, line 5, strike "5" and insert "**2 through 5**".

Page 14, line 17, reset in roman "4 or".

Page 14, line 23, after "expunged." insert "**A petition for expungement granted under sections 4 through 5 of this chapter does not affect an existing or pending driver's license suspension.**".

Page 15, line 20, strike "successfully completed all terms of the sentence previously" and insert "**paid all fines, fees, and court costs, and satisfied any restitution obligation imposed on the person as part of the sentence.**".

Page 15, strike line 21.

Page 15, line 22, strike "(A) payment of restitution, fines,".

Page 15, line 22, delete "fees,".

Page 15, line 22, strike "and court costs; and".

Page 15, strike lines 23 through 24.

Page 15, line 33, delete "." and insert "**by contacting the victim at the victim's last known address.**".

Page 16, line 9, strike "clear and convincing" and insert "**a preponderance of the**".



Page 16, line 42, delete "A" and insert "**Except as provided in subsection (j), a**".

Page 17, after line 14, begin a new paragraph and insert:

"SECTION 15. IC 35-38-9-10, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) It is unlawful discrimination for any person to:

- (1) suspend;
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession;
- (6) otherwise discriminate against;

any person because of a conviction or arrest record expunged or sealed under this chapter.

(b) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, and, to the extent not prohibited by federal law, to own or possess a firearm.

(c) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

(d) A person whose record is expunged shall be treated as if the person had never been convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

- (1) may be considered by the court in determining the sentence imposed for the new offense;
- (2) is a prior unrelated conviction for purposes of:
 - (A) a habitual offender enhancement; and
 - (B) enhancing the new offense based on a prior conviction;
 and
- (3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(e) Any person that discriminates against a person as described in subsection (a) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of



a court. In addition, the person is entitled to injunctive relief.

(f) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(g) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

(h) A petition for expungement and an order for expungement are confidential.

SECTION 16. IC 35-38-9-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) A person may not waive the right to expungement under this chapter as part of a plea agreement. Any purported waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy.**

(b) This section does not prohibit the finding of a waiver of the right to expungement based on a failure to comply with the provisions of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1155 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 10, nays 2.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1155, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 16 with "[EFFECTIVE UPON PASSAGE]".

Page 2, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 2. IC 35-31.5-2-78, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 78. "Crime of domestic violence", for purposes of IC 5-2-6.1, **IC 35-38-9**, and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
 - (A) use of physical force; or
 - (B) threatened use of a deadly weapon; and
- (2) is committed against a:
 - (A) current or former spouse, parent, or guardian of the defendant;
 - (B) person with whom the defendant shared a child in common;
 - (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or
 - (D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant."

Page 12, line 25, strike "and".

Page 12, line 29, delete "information." and insert "information; and

(E) the:

- (i) members of the state board of law examiners;**
- (ii) executive director of the state board of law examiners; and**
- (iii) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;**

for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar."

Page 14, between lines 5 and 6, begin a new paragraph and insert:

"(f) Expungement of a crime of domestic violence under section 2 of this chapter does not restore a person's right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance



with IC 35-47-4-7."

Page 17, line 28, after "office," insert "**and**".

Page 17, line 29, delete "juror," and insert "juror."

Page 17, line 29, strike "and, to the extent not prohibited by federal law, to own".

Page 17, strike line 30.

Page 18, after line 32, begin a new paragraph and insert:

"SECTION 18. IC 35-47-4-7, AS ADDED BY P.L.118-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5, the restoration of the right to serve on a jury under IC 33-28-5-18, ~~or~~ the restoration of the right to vote under IC 3-7-13-5, **or the expungement of a crime of domestic violence under IC 35-38-9**, and except as provided in subsections (b), (c), and (f), a person who has been convicted of a crime of domestic violence may not possess a firearm. ~~after the person's release from imprisonment or lawful detention.~~

(b) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:

- (1) Whether the person has been subject to:
 - (A) a protective order;
 - (B) a no contact order;
 - (C) a workplace violence restraining order; or
 - (D) any other court order that prohibits the person from possessing a firearm.
- (2) Whether the person has successfully completed a substance abuse program, if applicable.
- (3) Whether the person has successfully completed a parenting class, if applicable.
- (4) Whether the person still presents a threat to the victim of the crime.
- (5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to satisfy a specified condition under subsection (c) or whether the person has committed a subsequent offense.

(c) The court may condition the restoration of a person's right to possess a firearm upon the person's satisfaction of specified conditions.

(d) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent



petition until one (1) year has elapsed after the filing of the most recent petition.

(e) A person has not been convicted of a crime of domestic violence for purposes of subsection (a) ~~if the conviction has been expunged or~~ if the person has been pardoned.

(f) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on postconviction review at the earlier of the following:

(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.

(2) Ninety (90) days after the final disposition of the appeal or the postconviction proceeding.

SECTION 19. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1155 as printed January 17, 2014.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 1.

